

In re: LOUIS JOHN SOUZA.
AWA Docket 99-0037.
Decision and Order filed December 22, 1999.

Sharlene A. Deskins, for Complainant.
Respondent, Pro se.
Decision issued by James W. Hunt, Administrative Law Judge.

Preliminary Statement

This proceeding was instituted under the Animal Welfare Act ("Act"), as amended (7 U.S.C. § 2131 *et seq.*), by a Complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondent willfully violated the Act and the regulations issued thereunder (9 C.F.R. § 1.1 *et seq.*).

Copies of the Complaint and the Rules of Practice governing proceedings under the Act, 7 C.F.R. §§ 1.130-1.151, were served upon respondent by certified mail on August 5, 1999. Respondent was informed in the letter of service that an Answer should be filed pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that allegation.

Respondent failed to file an Answer addressing the allegations contained in the complaint within the time prescribed in the Rules of Practice. Therefore, the material facts alleged in the Complaint, which are admitted as set forth herein by respondent's failure to file an Answer pursuant to the Rules of Practice, are adopted as set forth herein as Findings of Fact and Conclusions of Law.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139.

Findings of Fact and Conclusions of Law

I

A. Louis John Souza, hereinafter referred to as respondent, is an individual whose address is Route 1, Box 702, Phillipsburg, Missouri 65722.

B. The respondent, at all times material herein, was operating as a dealer as defined in the Act and the regulations.

II

Since at least August 26, 1997, and continuing to the present, the respondent operated as a dealer as defined in the Act and regulations without being licensed, in willful violation of section 4 of the Act (7 U.S.C. § 2134) and section 2.1 of the regulations (9 C.F.R. § 2.1). The respondent sold or offered for sale, in commerce, at least 59 dogs for resale for use as pets. The sale or offer for sale of each animal constitutes a separate violation as set forth below.

1. On or about August 26, 1997, the respondent sold two dogs to a retail pet store in Hollywood, Florida.
2. On or about September 17, 1997, the respondent sold two dogs to a retail pet store in Stuart, Florida.
3. On or about November 5, 1997, the respondent sold one dog to a retail pet store in Stuart, Florida.
4. On or about November 19, 1997, the respondent sold two dogs to a retail pet store in Hollywood, Florida.
5. On or about December 3, 1997, the respondent sold one dog to a retail pet store in Hollywood, Florida.
6. On or about December 3, 1997, the respondent sold one dog to a retail pet store in Hollywood, Florida.
7. On or about December 15, 1997, the respondent sold three dogs to retail pet stores in Deland and Sunrise, Florida.
8. On or about January 4, 1998, the respondent sold one dog to a retail pet store in Hialeah, Florida.
9. On or about January 6, 1998, the respondent sold two dogs to a retail pet store in Stuart, Florida.
10. On or about February 6, 1998, the respondent sold three dogs to retail pet stores in Hollywood and Stuart, Florida.
11. On or about February 11, 1998, the respondent sold four dogs to retail pet stores in Sunrise, Hialeah and Stuart, Florida.
12. On or about February 18, 1998, the respondent sold two dogs to retail pet stores in Sunrise and Boynton Beach, Florida.
13. On or about February 21, 1998, the respondent sold one dog to a retail pet store in Stuart, Florida.
14. On or about February 26, 1998, the respondent sold one dog to a retail pet store in Boynton Beach, Florida.
15. On or about March 18, 1998, the respondent sold three dogs to retail pet stores in Sunrise, Deland and Carnvale, Florida.
16. On or about March 27, 1998, the respondent sold two dogs to a retail pet store in Hollywood, Florida.
17. On or about April 9, 1998, the respondent sold one dog to a retail pet store in Sunrise, Florida.

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18. On or about April 15, 1998, the respondent sold two dogs to retail pet stores in Sunrise and Hollywood, Florida.
19. On or about April 18, 1998, the respondent sold two dogs to retail pet stores in Sunrise and Hollywood, Florida.
20. On or about April 23, 1998, the respondent sold three dogs to a retail pet stores in Hollywood, Boynton Beach and Ocala, Florida.
21. On or about April 24, 1998, the respondent sold one dog to a retail pet store in Stuart, Florida.
22. On or about May 7, 1998, the respondent sold one dog to a retail pet store in Stuart, Florida.
23. On or about May 12, 1998, the respondent sold two dogs to a retail pet stores in Hialeah and Boynton Beach, Florida.
24. On or about May 15, 1998, the respondent sold one dog to a retail pet store in Stuart, Florida.
25. On or about March 26, 1998, the respondent sold one dog to a retail pet store in Stuart, Florida.
26. On or about March 28, 1998, the respondent sold three dogs to a retail pet stores in Sunrise and Deland, Florida.
27. On or about June 18, 1998, the respondent sold eleven dogs retail pet stores in Hollywood, Hialeah, Boynton Beach, Deland and Fort Lauderdale, Florida.
28. Between July 6 and July 10, 1998, the respondent sold dogs to a retail pet store in Miami, Florida.

III

A. On September 29, 1997, APHIS inspected respondent's premises and found that respondent had failed to maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine and failed to provide veterinary care to animals in need of care, in willful violation of section 2.40 of the regulations (9 C.F.R. § 2.40).

B. On September 29, 1997, APHIS inspected respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

1. Housing facilities for dogs were not structurally sound and maintained in good repair so as to protect the animals from injury, contain the animals securely, and restrict other animals from entering (9 C.F.R. § 3.1(a));
2. Housing facilities were not equipped with disposal facilities and drainage systems that are constructed and operated so that animal waste and water are rapidly

eliminated and animals stay dry (9 C.F.R. § 3.1(f));

3. Dogs in outdoor housing facilities were not provided with adequate protection from the elements (9 C.F.R. § 3.4(b));

4. Prohibited objects specifically metal barrels were used as shelter structures in outdoor housing facilities for dogs (9 C.F.R. § 3.4(c));

5. The respondent failed to develop, document, and follow an appropriate plan to provide dogs with the opportunity for exercise (9 C.F.R. § 3.8);

6. Food receptacles for dogs were not kept clean and sanitized (9 C.F.R. § 3.9(b));

7. Watering receptacles for dogs were not kept clean and sanitized (9 C.F.R. § 3.10);

8. Primary enclosures for dogs were not kept clean (9 C.F.R. § 3.11(a)); and

9. The premises including buildings and surrounding grounds, were not kept in good repair, and clean and free of trash, junk, waste, and discarded matter, and weeds, grasses and bushes were not controlled, in order to protect the animals from injury, facilitate the required husbandry practices (9 C.F.R. § 3.11(c)).

IV

A. On December 11, 1997, APHIS inspected respondent's premises and found that respondent had failed to maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine and failed to provide veterinary care to animals in need of care, in willful violation of section 2.40 of the regulations (9 C.F.R. § 2.40).

B. On December 11, 1997, APHIS inspected respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

1. Dogs in outdoor housing facilities were not provided with adequate protection from the elements (9 C.F.R. § 3.4(b));

2. Primary enclosures for dogs were not constructed so that they provide sufficient space to allow each animal to turn about freely, to stand, sit, and lie in a comfortable, normal position, and to walk in a normal manner (9 C.F.R. § 3.6(a));

3. The respondent failed to develop, document, and follow an appropriate plan to provide dogs with the opportunity for exercise (9 C.F.R. § 3.8);

4. Food receptacles for dogs were not kept clean and sanitized (9 C.F.R. § 3.9(b));

5. Watering receptacles for dogs were not kept clean and sanitized (9 C.F.R. § 3.10); and

6. Primary enclosures for dogs were not kept clean (9 C.F.R. § 3.11(a)).

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On January 9, 1998, APHIS inspected respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

1. Interior surfaces of housing facilities and surfaces that come in contact with dogs were not free of jagged edges and sharp points that might injure the animals (9 C.F.R. § 3.1(c)(1)(ii));
2. Housing facilities were not equipped with disposal facilities and drainage systems that are constructed and operated so that animal waste and water are rapidly eliminated and animals stay dry (9 C.F.R. § 3.1(f));
3. Dogs in outdoor housing facilities were not provided with adequate protection from the elements (9 C.F.R. § 3.4(b)); and
4. The respondent failed to develop, document, and follow an appropriate plan to provide dogs with the opportunity for exercise (9 C.F.R. § 3.8).

Conclusions

1. The Secretary has jurisdiction in this matter.
2. By reason of the facts set forth in the Findings of Fact above, the respondent has violated the Act and regulations promulgated under the Act.
3. The following Order is authorized by the Act and warranted under the circumstances.

Order

1. Respondent, his agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations and standards issued thereunder, and in particular, shall cease and desist from:
 - (a) Engaging in any activity for which a license is required under the Act and regulations without being licensed as required;
 - (b) Failing to maintain housing facilities for dogs in a structurally sound condition and in good repair;
 - (c) Failing to provide animals with adequate shelter from the elements;
 - (d) Failing to provide for the regular and frequent collection, removal, and disposal of animal and food wastes, bedding, debris, garbage, water, other fluids and wastes, in a manner that minimizes contamination and disease risks;
 - (e) Failing to maintain surfaces that come into contact with animals that do not have jagged wire and sharp pointed wood;
 - (f) Failing to provide sufficient space for animals in primary enclosures;

(g) Failing to develop, document, and follow an appropriate plan to provide dogs with the opportunity for exercise;

(h) Failing to provide dogs with food and water receptacles that are clean and sanitized;

(i) Failing to keep the primary enclosures for animals clean;

(j) Failing to keep the premises clean and in good repair and free of accumulations of trash, junk, waste, and discarded matter, and to control weeds, grasses and bushes; and

(k) Failing to establish and maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine.

2. Respondent is assessed a civil penalty of \$21,000, which shall be paid by a certified check or money order made payable to the Treasurer of United States.

3. Respondent is disqualified for 90 days from applying for a license. However, the period of disqualification shall continue until the Respondent pays the civil penalty assessed in this decision and order.

The provisions of this Order shall become effective on the first day after service of this decision on the respondent.

Pursuant to the Rules of Practice, this decision becomes final without further proceedings 35 days after service as provided in sections 1.142 and 1.145 of the Rules of Practice, 7 C.F.R. §§ 1.142 and 1.145.

Copies of this decision shall be served upon the parties.

[This Decision and Order became final February 4, 2000.-Editor]
